

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RALPH W. MCCLAIN, JR.	:	CIVIL ACTION
<i>Plaintiff, pro se</i>	:	
	:	
v.	:	NO. 19-5148
	:	
WENDY SHAYLOR, et al.,	:	
	:	
<i>Defendants</i>	:	

ORDER

AND NOW, this 31st day of March 2020, upon consideration of the *Report and Recommendation* issued on March 2, 2020, by the Honorable Lynne A. Sitarski, United States Magistrate Judge (the “Magistrate Judge”), [ECF 11], to which no objections were filed by Plaintiff Ralph W. McClain, Jr., (“Plaintiff”), and after a careful and independent review of the complaint, [ECF 1], it is hereby **ORDERED** that the *Report and Recommendation* is **APPROVED** and **ADOPTED**.¹ Accordingly, the underlying motion to dismiss filed by Defendants Phillip Washington and Zaida Melendez, [ECF 3], is **GRANTED**, and:

1. Plaintiff’s claims against Defendants Phillip Washington and Zaida Melendez, in their official capacity, are **DISMISSED, WITH PREJUDICE**;
2. Plaintiff’s claims against Defendants Phillip Washington and Zaida Melendez, in their individual capacities, for alleged violation of Plaintiff’s First Amendment

¹ As noted, the Report and Recommendation (the “R&R”), was submitted on March 2, 2020. As of the date of this Order, Plaintiff has not filed any objection and/or response to the R&R. Therefore, review of the R&R is under the “plain error” standard. *See Facyson v. Barnhart*, 2003 WL 22436274, at *2 (E.D. Pa. May 30, 2003). Under this plain error standard of review, an R&R should only be rejected if the magistrate judge commits an error that was “(1) clear or obvious, (2) affect[ed] ‘substantial rights,’ and (3) seriously affected the fairness, integrity or public reputation of judicial proceedings.” *Leyva v. Williams*, 504 F.3d 357, 363 (3d Cir. 2007) (internal quotations and citations omitted). Here, after a thorough, independent review of the record and the R&R, this Court finds the Magistrate Judge did not commit any error and, therefore, approves and adopts the R&R in its entirety.

rights to access the courts are **DISMISSED, WITHOUT PREJUDICE**. Plaintiff has leave to file an amended complaint reasserting his First Amendment claims against Defendants Washington and Mendez, if appropriate, by May 1, 2020.

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro

NITZA I. QUIÑONES ALEJANDRO

Judge, United States District Court